

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
Honolulu, Hawaii

December 12, 2008

Board of Land and
Natural Resources
Honolulu, Hawaii

RE: Request Board Approval of a Memorandum of Agreement between the County of Kauai and the Department of Land and Natural Resources for the purpose of identifying the duties and responsibilities to be borne by both parties regarding DLNR's use of the Kipu/Maluhia Firing Range on the island of Kauai.

Our DLNR, Conservation and Resources Enforcement Officers are required to be proficient in the use of firearms. This requires routine live fire training and actual live fire proficiency evaluations. DLNR does not have an approved live firing range on the island of Kauai. Kauai County has approved our request to use their range. This Memorandum of Agreement is the result of that approval and will be the final authorization needed in order for our Officers to begin to use the range on a regular basis.

RECOMMENDATION:

The Division of Conservation and Resources Enforcement recommends approval of this Memorandum of Agreement and asks that the Chairperson be authorized to sign the agreement provided that the Attorney General's Office first approve the content of the agreement or make substantive changes to the agreement in order to meet all State requirements.

Respectfully submitted,



GARY D. MONIZ
Enforcement Chief

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson

MEMORANDUM OF AGREEMENT

This Agreement ("Agreement") is made by and between the County of Kauai, (hereinafter called the "County") and the STATE OF HAWAII by its Department of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 (hereinafter called the "DLNR").

W I T N E S S E T H:

WHEREAS, the County is the owner of the Kipu/Maluhia Firing Range, hereinafter "Range", located one mile east of Kaumualii Highway, off of an old haul cane road, in Zone 3, Section 4, Plat 06:1 on the island of Kauai;

WHEREAS, the DLNR, with County approval, has previously used the Range for firearm training and evaluations and rappel training and certifications;

WHEREAS, the County hereby agrees to enter into this agreement with the DLNR to permit the DLNR continued usage of the Range; and

WHEREAS, it is the intent and the purpose of this Agreement to set forth the joint and several obligations of the parties hereto with respect to such cooperative relationship;

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. Purpose of Agreement. This Agreement is for the purpose of identifying and enumerating the duties and responsibilities to be borne by both parties regarding the DLNR's use of the Range.

2. Responsibility for the Range. The County shall maintain overall supervision of the Range. The DLNR will supervise activities of its personnel on the Range and the areas and improvements when used by the DLNR. This Agreement is specifically limited to activities relating to the Range, property under the ownership, control and maintenance of the County.

3. Use of the Range. The DLNR shall have non-exclusive use of the Range upon the following terms and conditions:

a. The DLNR shall not, at any time, have exclusive use of the Range. The County reserves the right to permit others use of the Range during the hours the Range is available for DLNR use. However, the County shall coordinate joint use of the Range with the DLNR.

b. DLNR shall coordinate scheduling and use of the Range with the County. The County may cancel scheduled DLNR use of the range upon 24 hours notice.

c. Only vehicles delivering equipment or targets for the Range may drive onto the Range. All other vehicles shall not drive onto the Range and shall be parked in designated parking areas.

d. The DLNR shall have a qualified range safety officer, experienced and trained in the handling of firearms, present at all times when conducting any training, qualifications and certifications.

e. No DLNR personnel shall be allowed to fire at the Range without a qualified range safety officer supervising at all times.

- f. Only DLNR department authorized firearms are permitted on the Range.
- g. Firearms of .50 caliber BMG or greater, tracers, armor piercing ammunition and incendiary rounds are prohibited on the Range.
- h. DLNR must supply all targets and support structures for such targets. Cardboard and paper targets are permitted.
- i. Steel plate targets are permitted only when monitored by a qualified range safety officer. Unless frangible bullet type ammunition is used, steel plate targets must swing freely upon impact and no firing is permitted closer than fifteen (15) yards.
- j. Shooting at cans and bottles is not permitted.
- k. The DLNR shall remove and dispose of all fired brass casing and shotgun hulls in the proper receptacles. Any misfires or "duds" shall be surrendered to the range safety officer.
- l. After use of the Range, the DLNR shall ensure that all targets are properly stored and/or disposed of, empty casings removed, and the area secured. All targets and support structures for such targets must not be stored at the Range.
- m. The consumption of alcoholic beverages is prohibited at the Range.
- n. Unless prior County consent is given, DLNR shall not permit use of the Range by persons who are not employees of the DLNR.

4. Alterations or Improvements. The DLNR shall not make any alterations, repairs, or improvements to the Range without the prior written consent of the County.

5. Damage or Injury. The State shall be responsible for damage or personal injury resulting from acts or omissions of state employees while acting within the scope of their employment to the extent that the State's liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

The County shall be responsible for damage or personal injury resulting from acts or omissions of County employees while acting within the scope of their employment to the extent that the County's liability for such damage or injury has been determined by a court or otherwise agreed to by the County. The County shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Kauai County Council for such purpose, and the funds have been allocated by the executive budget process.

6. Maintenance. The County shall do general cleaning and maintenance of the Range. The DLNR shall clean and maintain any fixtures and equipment installed by the DLNR, subject to the County's prior consent, and used solely for DLNR purposes, on a regular basis, or when deemed necessary by the County. The

DLNR shall periodically check all equipment and fixtures to ascertain their condition to ensure safe use.

7. DLNR will coordinate and communicate with the Kaua'i Police Department, which will serve as the contact for the County on this matter, including regarding use and scheduling of the Range under paragraphs 3(a) and 3(b) and any County consents needed under paragraphs 3(n), 4 and 6.

8. Nondiscrimination. The use of the Range shall not be in support of any activity or policy which discriminates against anyone based upon race, religion, color, sex, age, disability or national origin.

9. Removal of Supplies, Improvements and Equipment. Upon termination of this Agreement as hereinafter provided, the DLNR shall remove its supplies, furniture, improvements and equipment within sixty (60) days and restore the premises to its original condition, reasonable wear and tear excepted; provided, however, that in the event the DLNR fails to so remove and restore, the County shall remove the same and charge such removal and restoration to the DLNR.

10. Effective Date and Termination Notice. This Agreement shall become effective upon its execution by both parties and may be terminated by either the County or the DLNR at any time, with or without cause, upon either party giving sixty (60) days prior written notice.

11. Term of Agreement. The term of this Agreement shall be for a period of five (5) years, commencing on its effective date.

12. Amendments. This Agreement constitutes the entire agreement between the parties. No modification of this Agreement is binding on either party unless the modification is in writing, and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed these presents on the day and year set forth below.

COUNTY OF KAUAI

By _____
Its
Dated: _____

APPROVED AS TO FORM:

Deputy Corporation Counsel
County of Kauai

Laura Thielen, Director
Department of Land and
Natural Resources
Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General